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17 LOS ANGELES WATERKEEPER

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

17 LOS ANGELES WATERKEEPER, a  
18 California non-profit association,

19 Plaintiff,

20 v.

21  
22 NALCO COMPANY LLC, a Delaware  
23 limited liability company,

24 Defendants.

Civil Case No.:

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

**(Federal Water Pollution Control  
Act, 33 U.S.C. §§ 1251 *et seq.*)**

1 LA Waterkeeper (“LA Waterkeeper” or “Plaintiff”), by and through its counsel,  
2 hereby alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provision of  
5 the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act”  
6 or “CWA”). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the  
7 parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and  
8 2201 (an action for declaratory and injunctive relief arising under the Constitution and  
9 laws of the United States).

10 2. On January 31, 2023, LA Waterkeeper issued a 60-day notice letter (“Notice  
11 Letter”), to Ecolab, Inc. and Nalco Company LLC (collectively “Nalco” or  
12 “Defendants”), as the owners and operators of the facility under its control. The Notice  
13 Letter informed Defendants of their violations of California’s General Permit for  
14 Discharges of Storm Water Associated with Industrial Activities (*National Pollutant*  
15 *Discharge Elimination System (NPDES) General Permit No. CAS000001, State Water*  
16 *Resources Control Board Water Quality Order No. 2014-0057-DWQ* and amended by  
17 *Order No. 2015-0122 –DWQ* and incorporating: 1) Federal Sufficiently Sensitive Test  
18 Method Ruling; 2) Total Maximum Daily Loads (“TMDL”) Implementation  
19 Requirements; and 3) Statewide Compliance Options Incentivizing On-Site or Regional  
20 Storm Water Capture and Use, and as subsequently amended by *Order 2018-0028-DWQ*  
21 (effective July 1, 2020) (“General Permit” or “Storm Water Permit”) and the Clean Water  
22 Act at the industrial facility located at 2111 E. Dominguez Street, Carson, CA 90810 with  
23 Waste Discharger Identification Number (“WDID”) 4 19I019087 (“Facility”).

24 3. The Notice Letter informed Defendant of LA Waterkeeper’s intent to file  
25 suit against Defendant to enforce the Storm Water Permit and the Clean Water Act.

26 4. The Notice Letter was sent to Nalco’s Chief Executive Officer, Plant and  
27 Quality Assurance Managers, and the Agent for Service of Process (40 C.F.R.  
28 § 135.2(a)(2)). The Notice Letter was also sent to the Acting Administrator of the United

1 States Environmental Protection Agency (“EPA”), the Acting Administrator of EPA  
2 Region IX, the Executive Director of the State Water Resources Control Board (“State  
3 Board”), and the Executive Officer of the Regional Water Quality Control Board, Los  
4 Angeles Region, (“Regional Board”) as required by Section 505(b) of the CWA, 33  
5 U.S.C. § 1365(b)(1)(A). The Notice Letter is attached hereto as **Exhibit A** and is fully  
6 incorporated herein by reference.

7 5. More than sixty (60) days have passed since the Notice Letter was served on  
8 the Defendant and the State and Federal agencies. LA Waterkeeper is informed and  
9 believes, and thereon alleges, that neither the EPA nor the State of California has  
10 commenced or is diligently prosecuting an action to redress the violations alleged in the  
11 Notice Letter and in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B). This action is not  
12 barred by any prior administrative penalty under Section 309(g) of the CWA, 33 U.S.C. §  
13 1319(g).

14 6. Venue is proper in the Central District of California pursuant to Section  
15 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are  
16 located within this judicial district.

17 7. Plaintiff seeks relief for Defendants’ substantive and procedural violations of  
18 the Storm Water Permit and the Clean Water Act resulting from industrial activities at the  
19 Facility.

## 20 **II. INTRODUCTION**

21 8. With every significant rainfall event, hundreds of millions of gallons of  
22 polluted rainwater, originating from industrial operations such as the Facility referenced  
23 herein, pour into the storm drains and local waterways. The consensus among regulatory  
24 agencies and water quality specialists is that storm water pollution accounts for more than  
25 half of the total pollution entering marine and river environments each year. These  
26 surface waters, known as Receiving Waters, are ecologically sensitive areas. Although  
27 pollution and habitat destruction have drastically diminished once abundant and varied  
28 fisheries, these waters are still essential habitat for dozens of fish and bird species as well

1 as macro-invertebrate and invertebrate species. Storm water and non-storm water contain  
2 sediment, heavy metals, such as aluminum, iron, chromium, copper, lead, mercury,  
3 nickel, and zinc, as well as high concentrations of nitrate and nitrite, and other pollutants.  
4 Exposure to polluted storm water harms the special aesthetic and recreational  
5 significance that the surface waters have for people in the surrounding communities. The  
6 public's use of the surface waters exposes many people to toxic metals and other  
7 contaminants in storm water and non-storm water discharges. Non-contact recreational  
8 and aesthetic opportunities, such as wildlife observation, are also impaired by polluted  
9 discharges to the Receiving Waters.

10 9. Heavy metals, such as copper, zinc, and lead accumulating in lakes, oceans,  
11 rivers and streams threaten the environment and can instigate health problems and genetic  
12 changes in aquatic life, birds and other animals dependent on these waterbodies. Heavy  
13 metals in water cannot be easily metabolized by aquatic organisms and can become  
14 enriched in organs such as the liver and kidney. Studies show that heavy metals can enter  
15 aquatic animals through their gills or during feeding and bind with substances in the  
16 bodies of wildlife. High concentrations of total suspended solids ("TSS") degrade optical  
17 water quality by reducing water clarity and decreasing light available to support  
18 photosynthesis. TSS has been shown to alter predator-prey relationships (for example,  
19 turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish  
20 habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life  
21 because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are  
22 absorbed into TSS. Thus, higher concentrations of TSS result in higher concentrations of  
23 toxins associated with those sediments. Inorganic sediments, including settleable matter  
24 and suspended solids, have been shown to negatively impact species richness, diversity,  
25 and total biomass of filter feeding aquatic organisms on bottom surfaces. Storm water  
26 discharged with high pH can damage the gills and skin of aquatic organisms and cause  
27 death at levels above 10 standard units. The pH scale is logarithmic, and the solubility of  
28 a substance varies as a function of the pH of a solution. A one-whole-unit change in SU

1 represents a tenfold increase or decrease in ion concentration. If the pH of water is too  
2 high or too low, the aquatic organisms living within it will become stressed or die.

3 10. This complaint seeks a declaratory judgment, injunctive relief, the  
4 imposition of civil penalties, and the award of costs, including attorney and expert  
5 witness fees, for Defendant's substantive and procedural violations of the Storm Water  
6 Permit and the Clean Water Act resulting from Defendant's operations at the Facility.<sup>1</sup>

7 11. LA Waterkeeper specifically alleges violations regarding Defendant's  
8 discharge of pollutants from the Facility into waters of the United States; violations of the  
9 monitoring, reporting, and best management practice requirements; and violations of  
10 other procedural and substantive requirements of the Storm Water Permit and the Clean  
11 Water Act, are ongoing and continuous.

### 12 **III. PARTIES**

#### 13 **A. Los Angeles Waterkeeper**

14 12. LA Waterkeeper is a non-profit 501(c)(3) public benefit corporation  
15 organized under the laws of the State of California. LA Waterkeeper's main office is  
16 located at 360 E. 2nd Street, Suite 250, Los Angeles, CA 90012.

17 13. LA Waterkeeper's members live and/or recreate in and around Los Angeles.  
18 LA Waterkeeper is dedicated to the preservation, protection, and defense of the  
19 environment, wildlife, and natural resources of local surface waters. To further these  
20 goals, LA Waterkeeper actively seeks federal and state agency implementation of the  
21 Clean Water Act and, where necessary, directly initiates enforcement actions on behalf of  
22 itself and others.

23 14. LA Waterkeeper members work, own homes and live in Los Angeles  
24 County and use and enjoy the waters near the Facility, including the Dominguez Channel  
25 Estuary the bordering parks, pathways, golf courses and athletic fields, and further  
26 downstream, the Los Angeles Harbor ("Receiving Waters") for biking, boating,  
27

28 <sup>1</sup> The Facility is fully described in Section V below.

1 kayaking, viewing wildlife, walking, running, and engaging in scientific study, including  
2 habitat monitoring and restoration activities.

3 15. Discharges of polluted storm water and non-storm water from the Facility  
4 degrade water quality and harm aquatic life in the Dominguez Channel Estuary, and Los  
5 Angeles Harbor, and impair LA Waterkeeper's and its members' use and enjoyment of  
6 those waters.

7 16. The violations of the Storm Water Permit and Clean Water Act at the  
8 Facility are ongoing and continuous, including but not limited to Defendant's discharge  
9 of polluted storm water from the Facility. Thus, the interests of LA Waterkeeper's  
10 members have been, are being, and will continue to be adversely affected by Defendant's  
11 failure to comply with the Storm Water Permit and the Clean Water Act.

12 17. Continuing commission of the acts and omissions alleged above will  
13 irreparably harm Plaintiff and its members, for which they have no plain, speedy or  
14 adequate remedy at law.

15 18. The interests of LA Waterkeeper and LA Waterkeeper's members have  
16 been, are being, and will continue to be adversely affected by Defendant's failure to  
17 comply with the Clean Water Act and the Storm Water Permit. The relief sought herein  
18 will redress the harms to Plaintiff caused by Defendant's activities.

19 **B. The Owners and/or Operators of the Facility**

20 19. LA Waterkeeper is informed and believes, and thereon alleges, that Nalco  
21 maintains its headquarters at 1601 W. Diehl Rd., Naperville, IL 60563.

22 20. LA Waterkeeper is informed and believes, and thereon alleges, that Nalco is  
23 the owner and operator of the Facility.

24 21. LA Waterkeeper is informed and believes, and thereon alleges, that that  
25 Nalco Company LLC is an active Delaware limited liability company registered in  
26 California.

1           22. LA Waterkeeper is informed and believes, and thereon alleges, that the name  
2 and address of the Registered Agent for CT Corporation System, 330 N. Brand Blvd.,  
3 Suite 700, Glendale, CA 91203.

4           23. LA Waterkeeper refers to Defendants Nalco and their management herein as  
5 the “Owners/Operators” of the Facility.

6 **IV. STATUTORY BACKGROUND**

7 **A. The Clean Water Act**

8           24. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the  
9 discharge of any pollutant into waters of the United States unless the discharge complies  
10 with various enumerated sections of the CWA. Among other things, Section 301(a)  
11 prohibits discharges not authorized by, or in violation of, the terms of a National  
12 Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section  
13 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

14           25. Section 402(p) of the CWA establishes a framework for regulating  
15 municipal and industrial storm water discharges under the NPDES program. 33 U.S.C. §  
16 1342(p). States with approved NPDES permit programs are authorized by Section 402(p)  
17 to regulate industrial storm water discharges through individual permits issued to  
18 dischargers and/or through the issuance of a single, statewide general permit applicable to  
19 all industrial storm water dischargers. 33 U.S.C. § 1342.

20           26. Section 301(b) of the Clean Water Act requires that, by March 31, 1989, all  
21 point source dischargers, including those discharging polluted storm water, must achieve  
22 technology-based effluent limitations by utilizing Best Available Technology  
23 Economically Achievable (“BAT”) for toxic and nonconventional pollutants and the Best  
24 Conventional Pollutant Control Technology (“BCT”) for conventional pollutants. *See* 33  
25 U.S.C. § 1311(b); 40 C.F.R. § 125.3(a)(2)(ii)-(iii).

26           27. The Clean Water Act requires point source discharges of pollutants to  
27 navigable waters be regulated by an NPDES permit. 33 U.S.C. §§ 1311(a) and 1342; *see*  
28 40 C.F.R. § 122.26(c)(1).

1           28. The “discharge of a pollutant” means, among other things, “any addition of  
2 any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12); *see* 40  
3 C.F.R. § 122.2.

4           29. The term “pollutant” includes “dredged spoil, solid waste, incinerator  
5 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological  
6 materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar  
7 dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. §  
8 1362(6); *see* 40 C.F.R. § 122.2.

9           30. The term “point source” means any “discernible, confined and discrete  
10 conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well,  
11 discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel  
12 or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. §  
13 1362(14); *see* 40 C.F.R. § 122.2.

14           31. “Waters of the United States” are defined as “navigable waters,” and “all  
15 waters which are currently used, were used in the past, or may be susceptible to use in  
16 interstate or foreign commerce, including waters which are subject to the ebb and flow of  
17 the tide.” 33 U.S.C. § 1362(7). “Navigable waters” means “the waters of the United  
18 States.” 33 U.S.C. 1362(7).

19           32. The EPA promulgated regulations for the Section 402 NPDES permit  
20 program defining “waters of the United States.” *See* 40 C.F.R. § 122.2. The EPA  
21 interprets waters of the United States to include not only traditionally navigable waters  
22 but also other waters, including waters tributary to navigable waters, wetlands adjacent to  
23 navigable waters, and other waters including intermittent streams that could affect  
24 interstate commerce. *Id.*

25           33. Section 505(a)(1) and Section 505(f) of the Clean Water Act provide for  
26 citizen enforcement actions against any “person” who is alleged to be in violation of an  
27 “effluent standard or limitation . . . or an order issued by the Administrator or a State with  
28 respect to such a standard or limitation.” *See* 33 U.S.C. §§ 1365(a)(i) and 1365(f).

1           34. The Defendant is a “person[s]” within the meaning of Section 502(5) of the  
2 Clean Water Act, 33 U.S.C. § 1362(5).

3           35. An action for injunctive relief is authorized under Section 505(a) of the  
4 CWA, 33 U.S.C. § 1365(a).

5           36. Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the  
6 Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4), each separate  
7 violation of the CWA occurring after November 2, 2015 commencing five years prior to  
8 the date of Notice of Violation and Intent to File Suit subjects Nalco to a penalty of up to  
9 \$64,618 per day per violation.

10          37. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits  
11 prevailing or substantially prevailing parties to recover litigation costs, including  
12 attorneys’ fees, experts’ fees, and consultants’ fees.

13           **B. California’s Storm Water Permit**

14          38. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows each state to  
15 administer its own EPA-approved NPDES permit program for regulating the discharge of  
16 pollutants, including discharges of polluted storm water. States with approved NPDES  
17 permit programs are authorized by Section 402(b) to regulate industrial storm water  
18 discharges through individual NPDES permits issued to dischargers and/or through the  
19 issuance of a statewide general NPDES permit applicable to all industrial storm water  
20 dischargers. *See id.*

21          39. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator of  
22 the EPA has authorized California to issue NPDES permits, including general NPDES  
23 permits. California has designated the State Board and the Regional Boards to administer  
24 its NPDES program. *City of Rancho Cucamonga v. Regional Water Quality Control Bd.*,  
25 135 Cal. App. 4th 1377, 1380-81 (2006). In California, the State Board is charged with  
26 regulating pollutants to protect California’s water resources. *See* Cal. Water Code §  
27 13001. The Storm Water Permit is a statewide general NPDES permit issued by the State  
28 Board pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1342(b), (p), and 40 C.F.R. §

1 123.25. Violations of the Storm Water Permit are also violations of the CWA. Storm  
2 Water Permit, Section XXI(A).

3 40. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water  
4 Quality Standards, including water quality objectives and beneficial uses for navigable  
5 waters of the United States. 33 U.S.C. § 1313(a). The CWA prohibits discharges from  
6 causing or contributing to a violation of such state Water Quality Standards. *See* 33  
7 U.S.C. § 1311(b)(1)(C); 40 C.F.R. §§ 122.4(a), (d); 40 C.F.R. § 122.44(d)(1).

8 41. The State Board elected to issue a statewide general permit for industrial  
9 discharges. The State Board issued the Storm Water Permit on or about November 19,  
10 1991, modified the Storm Water Permit on or about September 17, 1992, and reissued the  
11 Storm Water Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean  
12 Water Act, 33 U.S.C. § 1342(p).

13 42. On July 1, 2015, the current Storm Water Permit became effective and was  
14 issued as *NPDES General Permit No. CAS000001 State Water Resources Control Board*  
15 *Water Quality Order No. 2014-0057-DWQ*. Storm Water Permit, Section I(A) (Finding  
16 4).

17 43. On November 6, 2018, the State Board amended the Storm Water Permit  
18 with Order No. No. 2015-0122 –DWQ, incorporating: 1) Federal Sufficiently Sensitive  
19 Test Method Ruling; 2) TMDL Implementation Requirements; and 3) Statewide  
20 Compliance Options Incentivizing On-Site or Regional Storm Water Capture and Use  
21 (“2018 Permit Amendment”).

22 44. In order to discharge storm water lawfully in California, industrial  
23 dischargers must secure coverage under the Storm Water Permit and comply with its  
24 terms, or obtain and comply with an individual NPDES permit. Storm Water Permit,  
25 Section I(A) (Findings 8, 12). Prior to beginning industrial operations, dischargers are  
26 required to apply for coverage under the Storm Water Permit by submitting a Notice of  
27 Intent to Comply with the Terms of the General Permit to Discharge Storm Water  
28 Associated with Industrial Activity (“NOI”) to the State Board. Storm Water Permit,

1 Section I(A) (Finding 17), Section II(B).

2 **C. The Storm Water Permit's Discharge Prohibitions, Effluent**  
 3 **Limitations, and Receiving Water Limitations**

4 45. The Storm Water Permit contains certain absolute prohibitions. The Storm  
 5 Water Permit prohibits the direct or indirect discharge of materials other than storm water  
 6 ("non-storm water discharges"), which are not otherwise authorized by an NPDES  
 7 permit, to the waters of the United States. Storm Water Permit, Discharge Prohibition  
 8 III(B).

9 46. Effluent Limitation V(A) of the Storm Water Permit requires dischargers to  
 10 reduce or prevent pollutants associated with industrial activity in storm water discharges  
 11 through the implementation of Best Available Technology Economically Achievable  
 12 ("BAT") for toxic or non-conventional pollutants, and Best Conventional Pollutant  
 13 Control Technology ("BCT") for conventional pollutants. Toxic pollutants are listed at 40  
 14 C.F.R. § 401.15 and include copper, lead, and zinc, among others. Conventional  
 15 pollutants are listed at 40 C.F.R. § 401.16 and include biological oxygen demand, TSS,  
 16 oil and grease ("O&G"), pH, and fecal coliform.

17 47. Discharge Prohibition III(C) of the Storm Water Permit prohibits storm  
 18 water discharges that cause or threaten to cause pollution, contamination, or nuisance.

19 48. Under the CWA and the Storm Water Permit, dischargers must employ Best  
 20 Management Practices ("BMPs") that constitute BAT and BCT to reduce or eliminate  
 21 storm water pollution. 33 U.S.C. § 1311(b). Storm Water Permit, Effluent Limitation  
 22 V(A). EPA has developed benchmark levels ("Benchmarks") that are objective  
 23 guidelines to evaluate whether a permittee's BMPs achieve compliance with the  
 24 BAT/BCT standards. *See* Final National Pollutant Discharge Elimination System  
 25 (NPDES) General Permit for Storm Water Discharges From Industrial Activities ("Multi-  
 26 Sector Permit"), 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); Multi-Sector Permit, 73  
 27 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); Multi-Sector Permit, 65 Fed. Reg. 64,746,  
 28 64,766-67 (Oct. 30, 2000).

1           49. The EPA's most recent, 2021 Parameter Benchmark Values for the  
 2 following parameters, among others, are as follows: TSS—100 mg/L; O&G—15 mg/L;  
 3 aluminum—1.1 mg/L; cadmium—0.0018 mg/L; copper—0.0059 mg/L; zinc—0.12  
 4 mg/L; pH—6-9 s.u.; chemical oxygen demand—120 mg/L; and nitrate and nitrite  
 5 nitrogen—0.68 mg/L.

6           50. The Storm Water Permit contains Numeric Action Levels ("NALs") that  
 7 generally mirror the 2008 EPA Benchmark Values. *See* Storm Water Permit, Section  
 8 I(M)(Finding 62). An annual NAL exceedance occurs when the average of all the  
 9 analytical results for a parameter from samples taken within a reporting year<sup>2</sup> exceeds  
 10 the annual NAL value for that parameter. Annual NALs, not accounting for water  
 11 hardness, for the following parameters are: TSS—100 mg/L; copper—0.0332 mg/L;  
 12 zinc—0.26 mg/L; nickel—1.02; ammonia—2.14 mg/L; iron—1.0 mg/L; nitrate plus  
 13 nitrite as nitrogen ("N+N")—0.68 mg/L; O&G—15 mg/L; and aluminum—0.75 mg/L.  
 14 Storm Water Permit, Table 2 at 47. Instantaneous maximum NALs, for the following  
 15 parameters are: pH—6.0 – 9.0 s.u.; TSS—400mg/L; O&G—25mg/L. *Id.* An  
 16 instantaneous maximum NAL exceedance occurs when two or more analytical results  
 17 from samples taken for any parameter within a reporting year exceed the instantaneous  
 18 maximum NAL. Additional EPA Benchmarks for heavy metals, which depend on the  
 19 hardness of the receiving water, also apply to storm water discharges from the Facility.  
 20 Since entering the General Permit program, Nalco recorded NAL average exceedances  
 21 for zinc and recorded two storm water samples outside of the instantaneous maximum  
 22 NAL for pH.

23           51. Under the Storm Water Permit, a facility enters the State Board's  
 24 Exceedance Response Action ("ERA") Program when storm water sample results for a  
 25 parameter average over the NAL in a single reporting year or if storm water sample  
 26 results for a parameter exceed an instantaneous maximum NAL (or fall outside the pH  
 27 \_\_\_\_\_

28 <sup>2</sup> A reporting year under the General Permit is July 1 to June 30.

1 range) two or more times in a reporting year. Storm Water Permit, Section XII(A). If a  
2 parameter averages over the NAL or exceeds the instantaneous maximum NAL for two  
3 consecutive reporting years, that facility will enter into ERA Level 2. Storm Water  
4 Permit, Section XII(D).

5 52. Receiving Water Limitation VI(B) of the Storm Water Permit prohibit storm  
6 water discharges from adversely impacting human health or the environment.

7 53. Discharges with pollutant levels that exceed levels known to adversely  
8 impact aquatic species and the environment are violations of the Storm Water Permit's  
9 Receiving Water Limitation. Storm Water Permit, Section VI(B).

10 54. Receiving Water Limitation VI(A) of the Storm Water Permit prohibit storm  
11 water discharges that cause or contribute to an exceedance of any "applicable Water  
12 Quality Standard in a Statewide Water Quality Control Plan or the applicable Regional  
13 Board's Basin Plan."

14 55. Water Quality Standards ("WQS") are pollutant concentration levels  
15 determined by the State Board, the various Regional Boards, and the EPA to be protective  
16 of the beneficial uses of the waters that receive polluted discharges.

17 56. The State of California regulates water quality through the State Board and  
18 the nine Regional Boards. Each Regional Board maintains a separate Water Quality  
19 Control Plan which contains WQS for water bodies within its geographic area.

20 59. The State Water Quality Control Board, Los Angeles Region, has issued the  
21 Water Quality Control Plan for the Los Angeles Region ("the Basin Plan") to establish  
22 water quality objectives, implementation plans for point and non-point source discharges,  
23 prohibitions, and to further statewide plans and policies. The Basin Plan sets forth water  
24 quality objectives for dissolved metals such as aluminum, arsenic, and mercury. Basin  
25 Plan, Table 3.8. The Basin Plan states that the waters shall not receive sediment,  
26 settleable materials, or suspended materials that cause nuisance or adversely affect the  
27 waters' beneficial uses. *Id.* at 3-44. The Basin Plan also provides that "Toxic pollutants  
28

1 shall not be present at levels that will bioaccumulate in aquatic life to levels which are  
2 harmful to aquatic life or human health.” *Id.* at 3-24.

3 60. The Basin Plan specifies potential and existing beneficial uses for the  
4 Dominguez Channel Estuary including municipal supply, commercial and sportfishing,  
5 warm freshwater habitat, estuarian habitat, spawning, wildlife habitat, marine habitat,  
6 rare, threatened, or endangered species, migration, Basin Plan, Table 2-1. The Basin Plan  
7 further specifies beneficial uses for the Los Angeles Harbor. Basin Plan, Table 2-3.

8 61. Surface waters that cannot support the Beneficial Uses of those waters listed  
9 in the Basin Plan are designated as impaired water bodies pursuant to Section 303(d) of  
10 the Clean Water Act.

11 62. The Dominguez Channel Estuary is impaired for copper, lead, dieldrin,  
12 chlordane, benthic community effects, benzo(a)pyrene, benzo(a)anthracene, chrysene,  
13 indicator bacteria, PCBs, DDT, phenanthrene, pyrene, and toxicity. The Los Angeles  
14 Harbor is listed for copper, lead, chromium, toxaphene, dieldrin, zinc, mercury,  
15 cadmium, chlordane, benzo(a)pyrene, benzo(a)anthracene, 2-methylnaphthalene,  
16 chrysene, PCBs, DDT, phenanthrene, pyrene, benthic community effects, and toxicity.  
17 The Receiving Waters are impaired, and Defendant’s discharges of pollutants above the  
18 WQS contributes to the continued impairment of the receiving waters’ beneficial uses.

19 63. In addition, EPA has promulgated WQS for toxic priority pollutants in all  
20 California water bodies (“California Toxics Rule” or “CTR”), which apply to the  
21 Receiving Waters, unless expressly superseded by the Basin Plan. 40 C.F.R. § 131.38.  
22 The CTR sets forth lower numeric limits for zinc and other pollutants; CTR criteria can  
23 be as low as 0.12 mg/L for zinc in freshwater surface waters with water hardness  
24 calculation of 50 mg/L.<sup>3</sup>

25  
26  
27 <sup>3</sup> The CTR numeric limits, or “criteria,” are expressed as dissolved metal concentrations  
28 in the CTR, but the Storm Water Permit requires permittees to report their sample results  
as total metal concentrations. *See* Storm Water Permit, Attachment H at 18.

64. The CTR includes further numeric criteria set to protect human health and the environment in the State of California. *See* Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California Factsheet, EPA-823-00-008 (April 2000), available at: <https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criteria-priority-toxic-pollutants-state>.

65. Discharges with pollutant levels in excess of the CTR criteria, the Basin Plan, and/or other applicable WQS are violations of the Storm Water Permit's Receiving Water Limitations and Section VI(A) of the Storm Water Permit.

#### **D. The Storm Water Permit's Total Maximum Daily Limits**

66. The Facility will be subject to the Dominguez Channel Estuary TMDL requirements for metals in May of 2032, which will include the following instantaneous maximum TMDL Numeric Action Level ("TNALs")<sup>4</sup>: copper—0.0058 mg/L, lead—0.221 mg/L, and zinc—0.095 mg/L. Storm Water Permit, Attachment E.

#### **E. The Storm Water Permit's Storm Water Pollution Prevention Plan Requirements**

70. Dischargers must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") at the time industrial activities begin. Storm Water Permit, Sections I(I) (Finding 54), X(B). The SWPPP must identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water and authorized non-storm water discharges from the facility. Storm Water Permit, Section X(G). The SWPPP must identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water and authorized non-storm water discharges from the facility. Storm Water Permit, Section X(G). The SWPPP must identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water

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<sup>4</sup> Like instantaneous maximum NALs, a TNAL exceedance occurs when two or more analytical results from samples taken for any parameter within a reporting year exceed the instantaneous maximum TNAL value.

1 discharges. Storm Water Permit, Section X(H). The SWPPP must include BMPs that  
2 achieve pollutant discharge reductions attainable via BAT and BCT. Storm Water Permit,  
3 Section I(D) (Finding 32), Section X(C).

4 71. The SWPPP must include: a narrative description and summary of all  
5 industrial activity, potential sources of pollutants, and potential pollutants; a site map  
6 indicating the storm water conveyance system, associated points of discharge, direction  
7 of flow, areas of actual and potential pollutant contact, including the extent of pollution-  
8 generating activities, nearby water bodies, and pollutants control measures; a description  
9 of storm water management practices; a description of the BMPs to be implemented to  
10 reduce or prevent pollutants in storm water discharges and authorized non-storm water  
11 discharges; the identification and elimination of non-storm water discharges; the location  
12 where significant materials are being shipped, stored, received, and handled, as well as  
13 the typical quantities of such materials and the frequency with which they are handled; a  
14 description of dust and particulate-generating activities; and a description of individuals  
15 and its current responsibilities for developing and implementing the SWPPP. Storm  
16 Water Permit, Section X.

17 72. The objectives of the SWPPP are to identify and evaluate sources of  
18 pollutants associated with industrial activities that may affect the quality of storm water  
19 discharges, to identify and implement site-specific BMPs to prevent the exposure of  
20 pollutants to storm water, and to reduce or prevent the discharge of polluted storm water  
21 from industrial facilities. Storm Water Permit, Section X.

22 73. The Storm Water Permit requires the discharger to evaluate the SWPPP on  
23 an annual basis and revise it as necessary to ensure compliance with the Storm Water  
24 Permit. Storm Water Permit, Section X(A)-(B). The Storm Water Permit also requires  
25 that the discharger conduct an annual comprehensive site compliance evaluation that  
26 includes a review of all visual observation records, inspection reports and sampling and  
27 analysis results, a visual inspection of all potential pollutant sources for evidence of, or  
28 the potential for, pollutants entering the drainage system, a review and evaluation of all

1 BMPs to determine whether the BMPs are adequate, properly implemented and  
 2 maintained, or whether additional BMPs are needed, and a visual inspection of equipment  
 3 needed to implement the SWPPP. Storm Water Permit, Section X(B) and Section XV.

4 74. The SWPPP and site maps must be assessed annually and revised as  
 5 necessary to ensure accuracy and effectiveness. Storm Water Permit, Sections I(J)  
 6 (Finding 55) and X(B)(1). Significant SWPPP revisions must be certified and submitted  
 7 by the discharger via the State Board's electronic database, called the Storm Water  
 8 Multiple Application & Report Tracking System ("SMARTS") within 30 days. Storm  
 9 Water Permit, Section X(B)(2). Dischargers are required to submit revisions to the  
 10 SWPPP that are determined to not be significant every three (3) months in the reporting  
 11 year. *Id.* at Section X(B)(3); Storm Water Permit, Fact Sheet, Section II (I)(1).

12 75. LA Waterkeeper is informed and believes, and thereon alleges, that during  
 13 and/or after every significant rain event resulting in a storm water discharge from the  
 14 Facility since January 31, 2018, through the present, Defendant has discharged and  
 15 continues to discharge storm water from the Facility that contains concentrations of  
 16 pollutants at levels that violate the prohibitions and limitations set forth in the Storm  
 17 Water Permit, the technology-based Effluent Limitations, the Benchmarks, CTR, and/or  
 18 the WQS.

#### 19 **F. The Storm Water Permit's Monitoring Implementation Program** 20 **Requirements**

21 76. The Storm Water Permit requires facility operators to develop and  
 22 implement a Monitoring Implementation Plan ("MIP"). Storm Water Permit Sections  
 23 X(I) and XI(A)(D). The MIP must ensure that storm water discharges are in compliance  
 24 with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations  
 25 specified in the Storm Water Permit. Storm Water Permit Section XI. The MIP must  
 26 ensure that practices at the facility to prevent or reduce pollutants in storm water and  
 27 authorized non-storm water discharges are evaluated and revised to meet changing  
 28 conditions at the facility, including revision of the SWPPP. *Id.*

1           77. Further objectives of the MIP are to ensure that BMPs have been adequately  
2 developed and implemented, revised if necessary, and to ensure that storm water and  
3 non-storm water discharges are in compliance with the Storm Water Permit's Discharge  
4 Prohibitions, Effluent Limitations, and Receiving Water Limitations. Storm Water  
5 Permit, Section XI.

6           78. The MIP aids in the implementation and revision of the SWPPP and  
7 measures the effectiveness of BMPs to prevent or reduce pollutants in storm water  
8 discharges. *Id.*

9           79. The Storm Water Permit requires facility operators to monitor and sample  
10 storm water discharges to ensure that the facility is complying with the terms of the  
11 permit. Storm Water Permit, Sections I(J) (Findings 55-56) and XI.

12           80. Section XI(A)(4) of the Storm Water Permit require that the MIP shall be  
13 revised as necessary to ensure compliance with the Storm Water Permit.

14           81. Section XI(A) of the Storm Water Permit require dischargers to conduct  
15 monthly visual observations of storm water discharges.

16           82. Section XI(A)(2) of the Storm Water Permit requires dischargers to  
17 document the presence of any floating and suspended materials, O&G, discolorations,  
18 turbidity, or odor in the discharge, and the source of any pollutants in storm water  
19 discharges from the facility. Dischargers are required to maintain records of observations,  
20 observation dates, discharge locations observed, and responses taken to reduce or prevent  
21 pollutants from contacting storm water discharges. *See* Storm Water Permit, Section  
22 XI(A)(3). The Storm Water Permit also requires dischargers to revise the SWPPP as  
23 necessary to ensure that BMPs are effectively reducing and/or eliminating pollutants at  
24 the facility. Storm Water Permit, Section X(B)(1).

25           83. The Storm Water Permit requires dischargers to visually observe and collect  
26 samples of storm water discharges from all locations where storm water is discharged.  
27 Storm Water Permit, Section XI(B)(4).  
28

1           84. Section XI(B)(1) of the Storm Water Permit requires sampling if a  
2 precipitation event produces a discharge for at least one drainage area, and it is preceded  
3 by forty-eight (48) hours with no discharge from any drainage area (“Qualifying Storm  
4 Event” or “QSE”).

5           85. Section XI(B)(2) of the Storm Water Permit requires dischargers to collect  
6 and analyze storm water samples from two (2) QSEs within the first half of each  
7 reporting year (July 1 to December 31), and two (2) QSEs within the second half of each  
8 reporting year (January 1 to June 30).

9           86. Section XI(B)(6) of the Storm Water Permit requires dischargers to analyze  
10 storm water samples for TSS, O&G, pH, and additional parameters identified by the  
11 discharger on a facility-specific basis that serve as indicators of the presence of all  
12 industrial pollutants identified in the pollutant source assessment, additional applicable  
13 industrial parameters related to receiving waters with 303(d) listed impairments or  
14 approved TMDLs, and additional parameters required by the Regional Water Board.

15           87. The Facility’s NOI classifies the Facility under Standard Industrial  
16 Classification Codes (“SIC”) 2869 (industrial organic chemical, not elsewhere classified)  
17 and 2899 (chemicals and chemical preparations, not elsewhere classified). Under SIC  
18 Codes 2869 and 2899, Nalco is required to sample storm water for TSS, O&G, and pH.  
19 Facilities must also sample and analyze for additional parameters identified on a facility-  
20 specific basis to reflect a facilities’ pollutant source assessment, as required by the  
21 General Permit and the Regional Board, and additional parameters related to receiving  
22 waters with 303(d) listed impairments. Storm Water Permit, Section XI.B.6. When self-  
23 reporting storm water sample results, Defendant samples for those pollutants listed  
24 above, and based upon a pollutant source assessment, zinc and ammonia.

25           88. Section XVI of the Storm Water Permit requires dischargers to submit an  
26 annual report with a Compliance Checklist that indicates whether a Discharger complies  
27 with, and has addressed all applicable requirements of this General Permit, an  
28 explanation for any non-compliance of requirements within the reporting year, as

1 indicated in the Compliance Checklist, an identification, including page numbers and/or  
2 Sections, of all revisions made to the SWPPP within the reporting year, and the date(s) of  
3 the Annual Evaluation.

4 **G. Exceedance Response Action Requirements**

5 89. When the 2015 Permit became effective on July 1, 2015, all permittees were  
6 in “Baseline status.” See 2015 Permit, Section XII(B). A permittee’s Baseline status for  
7 any given parameter changes to “Level 1 status” if sampling results indicate a NAL  
8 exceedance for that same parameter. *See* Storm Water Permit, Section XII(C).

9 90. Level 1 status commences on July 1 following the reporting year during  
10 which the exceedance(s) occurred. *See* Storm Water Permit, Section XII(C). By October  
11 1 following commencement of Level 1 status, permittees are required to: complete an  
12 evaluation, with the assistance of a Qualified Industrial Stormwater Practitioner  
13 (“QISP”), of the industrial pollutant sources at the facility that are or may be related to  
14 the NAL exceedance(s); and identify in the evaluation the corresponding BMPs in the  
15 SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL  
16 exceedances and to comply with the requirements of Storm Water Permit. *See* Storm  
17 Water Permit Section XII(C)(1)(a)-(c).

18 91. Although the evaluation may focus on the drainage areas where the NAL  
19 exceedance(s) occurred, all drainage areas shall be evaluated. *See* Storm Water Permit,  
20 Section XII(C)(1)(c).

21 92. Based upon this Level 1 status evaluation, the permittee is required to, as  
22 soon as practicable but no later than January 1 following commencement of Level 1  
23 status, revise the SWPPP as necessary and implement any additional BMPs identified in  
24 the evaluation, certify and submit via SMARTS a Level 1 Exceedance Response Action  
25 (“ERA”) Report prepared by a QISP that includes the a summary of the Level 1 ERA  
26 Evaluation and a detailed description of the SWPPP revisions and any additional BMPs  
27 for each parameter that exceeded an NAL. *See* Storm Water Permit, Section  
28 XII(C)(2)(a)(i)-(ii).

1           93. The permittee in Level 1 status must also certify and submit via SMARTS  
2 the QISP's identification number, name, and contact information (telephone number, e-  
3 mail address) no later than January 1 following commencement of Level 1 status. *See*  
4 Storm Water Permit, Section XII(C)(2)(a)(iii).

5           94. A permittee's Level 1 status for a parameter will return to Baseline status  
6 once a Level 1 ERA Report has been completed, all identified additional BMPs have  
7 been implemented, and results from four (4) consecutive qualified storm events that were  
8 sampled subsequent to BMP implementation indicate no additional NAL exceedances for  
9 that parameter. *See* Storm Water Permit, Section XII(C)(2)(b).

10           95. A permittee's Level 1 status for any given parameter shall change to Level 2  
11 status if sampling results indicate an NAL exceedance for that same parameter while the  
12 Discharger is in Level 1. Level 2 status commences on July 1 following the reporting  
13 year during which the NAL exceedance(s) occurred. *See* Storm Water Permit, Section  
14 XII(D).

15           96. A Discharger in Level 2 status shall submit a Level 2 ERA Action Plan  
16 prepared by a QISP that addresses each new Level 2 NAL exceedance by January 1  
17 following the reporting year during with the NAL exceedances occurred. On January 1 of  
18 the reporting year following the submittal of the Level 2 ERA Action Plan, a Discharger  
19 shall certify and submit a Level 2 ERA Technical Report prepared by a QISP to  
20 SMARTS. *See*, Storm Water Permit, Section XII(D).

## 21 **V. STATEMENT OF FACTS**

### 22 **A. Nalco Facility Site Description, and Industrial Activities and Pollutant** 23 **Sources at the Facility**

24           97. Pursuant to a January 2023 SWPPP for the Facility ("Facility SWPPP"),  
25 Defendant operates an industrial facility of approximately 10 acres located at 2111 E.  
26 Dominguez Street, Carson, California 90810, with 5.5 acres of industrial areas exposed to  
27 stormwater. The Facility manufactures chemicals treat crude oil, industrial process water  
28 used in steam boilers, cooling towers and other industrial processes, and wastewater.

1 Chemicals used in the petroleum, paper and mining industries are also produced at the  
2 Facility. The Facility SWPPP lists operating hours as Monday through Friday, 3:30 am to  
3 3:30 pm.

4 98. LA Waterkeeper is informed and believes, and thereon alleges that industrial  
5 activities at the site include loading and unloading of bulk liquid material, pumping of  
6 liquid material to and from transporter compartments and bulk storage tanks, mixing and  
7 preparing chemicals, transfer of industrial materials between trucks, warehouses, outdoor  
8 storage areas, and manufacturing buildings. Areas of industrial activity include the  
9 process building, scrap metal bin area, storage sheds, tank farm, warehouses, loading  
10 areas, forklift traffic areas, outdoor storage areas, waste and hazardous waste areas, and  
11 an aboveground wastewater treatment system. Pollutants from these activities accumulate  
12 at the Facility and contribute to pollutants in storm water including ammonia, O&G, pH,  
13 TSS, copper and zinc.

14 99. The industrial areas and associated activities generate and release pollutants  
15 at the Facility which are discharged in storm water to the City of Long Beach Municipal  
16 Separate Storm Sewer System ("MS4") which flows to the Dominguez Channel Estuary.

17 100. Pursuant to the Facility SWPPP, storm water from three (3) drainage areas at  
18 the Facility flows to six (6) discharge points, with sampling occurring at three (3) of those  
19 discharge points, Catch Basin ("CB")-1B, CB-2B and CB-3A where storm water is  
20 sampled prior to discharge to the Municipal Separate Storm Sewer System ("MS4"). The  
21 CB-1B drainage area includes outdoor storage areas, industrial equipment areas, waste  
22 storage areas and roof runoff from the storage sheds. The CB-2B drainage area includes  
23 outdoor storage areas, industrial equipment areas, and waste storage areas, and the CB-  
24 3A drainage area includes industrial equipment areas, outdoor storage areas, areas of  
25 industrial traffic, loading and unloading and shipping and receiving areas, and waste  
26 storage areas.

27 101. Storm water discharged from the Facility enters the City of Long Beach  
28 MS4, which flows to the Dominguez Channel Estuary and into the Los Angeles Harbor.

1 The Dominguez Channel Estuary and the Los Angeles Harbor are waters of the United  
2 States within the meaning of the CWA.

3 **B. Dominguez Channel and Los Angeles Harbor**

4 95. LA Waterkeeper and its members utilize the Dominguez Channel Estuary,  
5 and the Los Angeles Harbor for research, study, and recreation. LA Waterkeeper  
6 monitors the water quality, insect populations, and habitat at multiple locations along the  
7 channel and in the harbor.

8 96. The Dominguez Channel is a waterway of historical and natural significance  
9 with a watershed comprised of approximately 110 square miles in the southern portion of  
10 Los Angeles County. Today, most of the watershed's total area is developed for  
11 residential and industrial use. The Dominguez Channel watershed contains a network of  
12 storm drains and smaller flood control channels and extends from the Los Angeles  
13 International Airport to the Harbor and drains large portions of Inglewood, Hawthorne, El  
14 Segundo, Gardena, Lawndale, Redondo Beach, Torrance, Carson and Los Angeles. LA  
15 Waterkeeper is dedicated to the restoration of the watershed by limiting pollution in the  
16 waterways to encourage the health of the local ecosystem.

17 **C. The Facility Storm Water Permit Coverage**

18 97. SMARTS lists the current Facility WDID number for the Facility as 4  
19 19I019087 and coverage under the Storm Water Permit as "Active."

20 98. The NOI for the Facility lists the Receiving Water as the Dominguez  
21 Channel. The January 2023 SWPPP states that that the Receiving Water is the  
22 Dominguez Channel Estuary, and ultimately into the Los Angeles Harbor and the Pacific  
23 Ocean.

24 99. Via search of the SMARTS database, LA Waterkeeper obtained a SWPPP  
25 for the Facility revised on January 18, 2023.

26 100. LA Waterkeeper is informed and believes, and thereon alleges, that Nalco  
27 has been operating with an inadequately developed or implemented SWPPP in violation  
28 of General Permit requirements since at least January 31, 2018. Nalco has failed to

1 evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in  
2 the Facility's unlawful effluent limitation violations.

3 101. LA Waterkeeper is informed and believes, and thereon alleges, that the  
4 Facility Owners/Operators failed to implement any additional BMPs as required by the  
5 General Permit. As such, the Owners and/or Operators are in daily violation of this  
6 requirement of the General Permit.

7 102. LA Waterkeeper is informed and believes, and thereon alleges, that Facility  
8 Owners/Operators have failed to implement BMPs that achieve compliance with Storm  
9 Water Permit or the CWA.

10 103. LA Waterkeeper is informed and believes, and thereon alleges, that  
11 pollutants associated with the Facility include, but are not limited to: ammonia, oil &  
12 grease, pH, TSS, copper and zinc.

13 104. LA Waterkeeper is informed and believes, and thereon alleges, that  
14 Nalco has failed to implement the minimum BMPs required by the General Permit,  
15 including good housekeeping requirements; preventive maintenance requirements; spill  
16 and leak prevention and response requirements; material handling and waste management  
17 requirements; erosion and sediment controls; employee training and quality assurance;  
18 and record keeping. General Permit, Sections X.H.1(a)-(g).

19 105. LA Waterkeeper is informed and believes, and thereon alleges, that Nalco  
20 has further failed to implement sufficient advanced BMPs necessary to reduce or prevent  
21 discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards,  
22 including: exposure minimization BMPs; containment and discharge reduction BMPs;  
23 treatment control BMPs; or other advanced BMPs necessary to comply with the General  
24 Permit's effluent limitations. General Permit, Sections X(H)(2). The Facility SWPPP  
25 references certain water that is discharged to the sanitary sewer and industrial activities  
26 taking place indoors.

27 106. LA Waterkeeper is informed and believes, and thereon alleges, that there are  
28 also insufficient minimal BMPs implemented, such as good housekeeping.

1           107. LA Waterkeeper is informed and believes, and thereon alleges, that  
2 Defendant has failed to collect sufficient storm water samples for analyses, in violation of  
3 the Storm Water Permit, since at least January 31, 2018.

4           108. LA Waterkeeper is informed and believes, and thereon alleges, that storm  
5 water containing excess levels of ammonia, O&G, zinc, and pH occur each time storm  
6 water discharges from Facility in violation of the Storm Water Permit Discharge  
7 Prohibitions III(C)-(D), Receiving Water Limitations VI(A)-(B).

8           109. LA Waterkeeper is informed and believes, and thereon alleges, that the  
9 repeated and significant exceedances of Benchmark Levels demonstrate that the  
10 Owners/Operators have failed and continue to fail to develop and/or implement BMPs to  
11 prevent the exposure of pollutants to storm water and to prevent discharges of polluted  
12 storm water and non-storm water from the Facility.

13           110. LA Waterkeeper is informed and believes, and thereon alleges, that the  
14 Owners/Operators have failed and continue to fail to evaluate the effectiveness of its  
15 BMPs and adequately revise the Facility SWPPP, despite repeated and significant  
16 concentrations of pollutants in Facility's storm water discharges. Further, Defendant has  
17 failed to make sufficient changes to the Facility's training programs, or make any other  
18 changes based upon events that would signal a need for required revisions or alteration of  
19 practices.

20           111. LA Waterkeeper is informed and believes, and thereon alleges, that  
21 pollutants, including but not limited to those referenced herein, have been and continue to  
22 be tracked throughout the Facility's operation areas.

23           112. LA Waterkeeper is informed and believes, and thereon alleges, that the  
24 Owners'/Operators' failure to properly address pollutant sources and pollutants results in  
25 the exposure of pollutants associated with its industrial activities to precipitation, and that  
26 this results in discharges of polluted storm water from Facility and into local waterways  
27 in violation of the Storm Water Permit and/or the CWA.

28           113. LA Waterkeeper is informed and believes, and thereon alleges, that the

1 Owners’/Operators’ failure to properly address these pollutants and its sources results in  
2 the exposure of pollutants to precipitation, which carries these pollutants with storm  
3 water flows from Facility into the Receiving Waters.

4 **D. Storm Water Discharges from the Facility**

5 114. As discussed above and as detailed in the Facility SWPPP, there are three  
6 (3) discharge points at the Facility where storm water leaves the Facility and enters the  
7 City of Long Beach MS4 and flows to the Dominguez Channel Estuary.

8 115. LA Waterkeeper is informed and believes, and thereon alleges, that Nalco  
9 has self-reported NAL exceedances from the Facility over the past three (3) reporting  
10 years and is currently in the State Board’s Exceedance Response Action (“ERA”)  
11 Program for NAL exceedances of zinc.

12 **E. The Facility’s Storm Water Discharges to the Receiving Waters Contain**  
13 **Elevated Levels of Pollutants**

14 116. LA Waterkeeper is informed and believes, and thereon alleges, that  
15 pollutants from the Facility discharge with storm water into the Dominguez Channel  
16 Estuary which flows to Los Angeles Harbor.

17 117. The EPA promulgated regulations for the Section 402 NPDES permit  
18 program defining waters of the United States. *See* 40 C.F.R. § 122.2. The EPA interprets  
19 waters of the United States to include not only traditionally navigable waters but also  
20 other waters, including waters tributary to navigable waters, wetlands adjacent to  
21 navigable waters, and other waters including intermittent streams that could affect  
22 interstate commerce. 40 C.F.R. § 120.2. The CWA requires any person who discharges or  
23 proposes to discharge pollutants into waters of the United States to submit an NPDES  
24 permit application. 40 C.F.R. § 122.21.

25 118. LA Waterkeeper is informed and believes, and thereon alleges, that the  
26 Owners’/Operators’ failure to properly address these pollutants and its sources results in  
27 the exposure of pollutants to precipitation, which carries these pollutants with storm  
28

1 water flows into the Dominguez Channel Estuary and the Los Angeles Harbor, all waters  
2 of the United States.

3 119. Storm water discharges containing pollutants including, but not limited to,  
4 heavy metals such as zinc, lead, and copper, and iron adversely affect the aquatic  
5 environment.

6 120. Samples of storm water discharges collected at the Facility contain  
7 pollutants including pH, zinc, ammonia, and O&G, in excess of levels known to  
8 adversely impact aquatic species and the environment, federal regulations, WQS,  
9 Benchmarks, and the CTR (zinc, copper, lead) in violation of the Storm Water Permit's  
10 Effluent Limitations and Receiving Water Limitations.

11 121. LA Waterkeeper is informed and believes, and thereon alleges, that during  
12 and/or after every significant rain event<sup>5</sup> or any other storm water discharge that has  
13 occurred at the Facility since January 31, 2018, through the present, Defendant has  
14 discharged and continues to discharge storm water from the Facility that contains  
15 concentrations of pollutants at levels that violate the prohibitions and limitations set forth  
16 in the Storm Water Permit, the Federal Effluent Limitations, the Benchmarks, CTR, and  
17 the WQS.

18 **F. Defendant's Violations of the Storm Water Permit's Sampling,**  
19 **Reporting, and Monitoring Implementation Plan Requirements**

20 122. LA Waterkeeper is informed and believes, and thereon alleges, that  
21 Defendant failed and continues to fail to develop an adequate Monitoring Implementation  
22 Plan ("MIP") for industrial operations at the Facility that complies with Section XI of the  
23 Storm Water Permit.

24 123. LA Waterkeeper is informed and believes, and thereon alleges, that  
25 Defendant failed and continues to fail to revise the MIP for the Facility as necessary to  
26 ensure compliance the Storm Water Permit in violation of with Section XI of the Storm

27  
28 <sup>5</sup> A significant rain event is an event that produces storm water runoff, which according  
to EPA occurs with more than 0.1 inches of precipitation.

1 Water Permit.

2 124. LA Waterkeeper is informed and believes, and thereon alleges, that  
3 Defendant failed and continues to fail to implement the MIP at the Facility, in violation  
4 of Section XI of the Storm Water Permit.

5 125. LA Waterkeeper is informed and believes, and thereon alleges, that  
6 Defendant failed and continues to fail to collect or analyze sufficient storm water samples  
7 at the Facility, in violation of Section XI of the Storm Water Permit.

8 126. LA Waterkeeper is informed and believes, and thereon alleges, that  
9 Defendant has failed and continues to fail to sample storm water discharges from all  
10 discharge locations, in violation of Section XI of the Storm Water Permit.

11 127. LA Waterkeeper is informed and believes, and thereon alleges, that the  
12 Owners/Operators of the Facility consistently fail to perform visual observations of storm  
13 water during QSEs.

14 128. LA Waterkeeper is informed and believes, and thereon alleges, that the  
15 Owners/Operators of the Facility have consistently failed and continue to fail to report  
16 any noncompliance with the Storm Water Permit at the time that the Annual Report is  
17 submitted.

18 129. LA Waterkeeper is informed and believes, and thereon alleges, that the  
19 Owners/Operators did not report their non-compliance as required by the Storm Water  
20 Permit.

21 130. LA Waterkeeper is informed and believes, and thereon alleges, that the  
22 Facility's ERA Report resulting from samples recorded in the 2021-2022 reporting year  
23 was insufficient.

24 131. LA Waterkeeper is informed and believes, and thereon alleges, that the  
25 Owners/Operators of the Facility fail to collect sufficient storm water samples during  
26 QSEs.

27 132. Information available to LA Waterkeeper are informed and believe, and  
28 thereon allege, that BMPs proffered as implemented in the Facility SWPPP are

1 insufficient and ineffective in reducing pollutants to levels compliant with the Storm  
2 Water Permit and/or the CWA.

3 133. LA Waterkeeper is informed and believes, and thereon alleges, that  
4 Defendant has failed to submit complete Annual Reports to the Regional Board for the  
5 past five reporting years in violation of Section XVI of the Storm Water Permit.

## 6 **VI. CLAIMS FOR RELIEF**

### 7 **FIRST CAUSE OF ACTION**

#### 8 **Discharges of Contaminated Storm Water in Violation of** 9 **the Storm Water Permit's Effluent Limitations and the Clean Water Act.** 10 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

11 134. LA Waterkeeper incorporates the allegations contained in the above  
12 paragraphs as though fully set forth herein.

13 135. LA Waterkeeper is informed and believes, and thereon alleges, that  
14 Defendant failed and continues to fail to reduce or prevent pollutants associated with  
15 industrial activities at the Facility from discharging from the Facility through  
16 implementation of BMPs that achieve BAT/BCT.

17 136. LA Waterkeeper is informed and believes, and thereon alleges, that  
18 discharges of storm water containing levels of pollutants that do not achieve compliance  
19 with BAT/BCT standards from the Facility occur every time storm water discharges from  
20 the Facility. Defendant's failure to develop and/or implement BMPs that achieve the  
21 pollutant discharge reductions attainable via BAT or BCT at the Facility is a violation of  
22 the Storm Water Permit and the CWA. *See* Storm Water Permit, Section I(D) (Finding  
23 32), Effluent Limitation V(A); 33 U.S.C. § 1311(b).

24 137. The Owners/Operators violate and will continue to violate the Storm Water  
25 Permit's Effluent Limitations each and every time storm water containing levels of  
26 pollutants that do not achieve BAT/BCT standards discharges from the Facility.

27 138. LA Waterkeeper is informed and believes, and thereon alleges, that the  
28 Owners'/Operators' violations of Effluent Limitations of the Storm Water Permit and the  
CWA are ongoing and continuous.

1           139. Each day since at least January 31, 2018, that the Owners/Operators  
2 discharge storm water containing pollutants in violation of the Storm Water Permit is a  
3 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

4           140. By committing the acts and omissions alleged above, the Owners/Operators  
5 are subject to an assessment of civil penalties for each and every violation of the CWA  
6 occurring from January 31, 2018, to the present, pursuant to Sections 309(d) and 505 of  
7 the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

8           141. An action for injunctive relief is authorized by CWA Section 505(a), 33  
9 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would  
10 irreparably harm Plaintiff, Plaintiff's members, and the citizens of the State of California,  
11 for which harm LA Waterkeeper has no plain, speedy, or adequate remedy at law.

12           142. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
13 an actual controversy exists as to the rights and other legal relations of the Parties.

14           WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
15 hereafter.

## 16                               **SECOND CAUSE OF ACTION**

### 17                   **Defendant's Discharges of Contaminated Storm Water in Violation of** 18                   **the Storm Water Permit's Receiving Water Limitations and the Clean Water Act.** 19                   **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

20           143. LA Waterkeeper incorporates the allegations contained in the above  
21 paragraphs as though fully set forth herein.

22           144. LA Waterkeeper is informed and believes, and thereon alleges, that  
23 discharges of storm water containing levels of pollutants that adversely impact human  
24 health and/or the environment from the Facility occur each time storm water discharges  
25 from the Facility.

26           145. LA Waterkeeper is informed and believes, and thereon alleges, that storm  
27 water containing levels of pollutants that cause or contribute to exceedances of water  
28 quality standards has discharged and continues to discharge from the Facility each time  
storm water discharges from the Facility.

1 146. The Owners/Operators violate and will continue to violate the Storm Water  
2 Permit's Receiving Water Limitations each and every time storm water containing levels  
3 of pollutants that adversely impact human health and/or the environment, and that cause  
4 or contribute to exceedances of WQS discharges from the Facility.

5 147. LA Waterkeeper is informed and believes, and thereon alleges, that the  
6 Owners'/Operators' violations of Receiving Water Limitations of the Storm Water Permit  
7 and the CWA are ongoing and continuous.

8 148. Each and every violation of the Storm Water Permits' Receiving Water  
9 Limitations is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §  
10 1311(a).

11 149. By committing the acts and omissions alleged above, the Owners/Operators  
12 are subject to an assessment of civil penalties for each and every violation of the CWA  
13 occurring from January 31, 2018 to the present, pursuant to Sections 309(d) and 505 of  
14 the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

15 150. An action for injunctive relief under the Clean Water Act is authorized by  
16 Section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions  
17 alleged above would irreparably harm Plaintiff, Plaintiff's members, and the citizens of  
18 the State of California, for which harm they have no plain, speedy, or adequate remedy at  
19 law.

20 151. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
21 an actual controversy exists as to the rights and other legal relations of the Parties.

22 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
23 hereafter.

24 **THIRD CAUSE OF ACTION**

25 **Defendant's Failure to Adequately Develop, Implement, and/or**  
26 **Revise a Storm Water Pollutant Prevention Plan in Violation of the**  
27 **Storm Water Permit and the Clean Water Act.**

28 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

152. LA Waterkeeper incorporates the allegations contained in the above

1 paragraphs as though fully set forth herein.

2 153. LA Waterkeeper is informed and believes, and thereon alleges, that the  
3 Owners/Operators have failed and continue to fail to develop an adequate SWPPP for the  
4 Facility, in violation of the Storm Water Permit.

5 154. LA Waterkeeper is informed and believes, and thereon alleges, that the  
6 Owners/Operators have failed and continue to fail to adequately implement a SWPPP for  
7 the Facility, in violation of the Storm Water Permit.

8 155. LA Waterkeeper is informed and believes, and thereon alleges, that  
9 Owners/Operators have failed and continue to fail to adequately revise the SWPPP for  
10 the Facility, in violation of the Storm Water Permit.

11 156. The Owners/Operators have been in violation of the Storm Water Permit at  
12 the Facility every day from January 31, 2018, to the present.

13 157. The Owners'/Operators' violations of the Storm Water Permit and the CWA  
14 at the Facility are ongoing and continuous.

15 158. The Owners/Operators will continue to be in violation of the Storm Water  
16 Permit and the CWA each and every day the Owners/Operators fail to adequately  
17 develop, implement, and/or revise the SWPPP for the Facility.

18 159. Each and every violation of the Storm Water Permit's SWPPP requirements  
19 at the Facility is a separate and distinct violation of the CWA.

20 160. By committing the acts and omissions alleged above, the Owners/Operators  
21 are subject to an assessment of civil penalties for each and every violation of the CWA  
22 occurring from January 31, 2018, to the present, pursuant to Sections 309(d) and 505 of  
23 the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

24 161. An action for injunctive relief under the CWA is authorized by Section  
25 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and  
26 omissions alleged above would irreparably harm LA Waterkeeper, its members, and the  
27 citizens of the State of California, for which harm they have no plain, speedy, or adequate  
28 remedy at law.

1 162. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
2 an actual controversy exists as to the rights and other legal relations of the Parties.

3 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
4 hereafter.

5 **FOURTH CAUSE OF ACTION**

6 **Defendant's Failure to Adequately Develop, Implement, and/or**  
7 **Revise a Monitoring and Reporting Plan in Violation of**  
8 **the Storm Water Permit and the Clean Water Act.**  
9 **U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

10 163. LA Waterkeeper incorporates the allegations contained in the above  
11 paragraphs as though fully set forth herein.

12 164. LA Waterkeeper is informed and believes, and thereon alleges, that the  
13 Owners/Operators have failed and continue to fail to develop an adequate MIP for the  
14 Facility, in violation of the Storm Water Permit.

15 165. LA Waterkeeper is informed and believes, and thereon alleges, that the  
16 Owners/Operators have failed and continue to fail to adequately implement an MIP for  
17 the Facility, in violation of the Storm Water Permit.

18 166. LA Waterkeeper is informed and believes, and thereon alleges, that the  
19 Owners/Operators have failed and continue to fail to adequately revise an MIP for the  
20 Facility, in violation of the Storm Water Permit.

21 167. The Owners/Operators have been in violation of the Storm Water Permit's  
22 monitoring requirements at the Facility every day from January 31, 2018 to the present.

23 168. The Owners'/Operators' violations of its Storm Water Permit's monitoring  
24 requirements and the CWA at the Facility are ongoing and continuous.

25 169. The Owners/Operators will continue to be in violation of Section XI of the  
26 Storm Water Permit, and the CWA each and every day they fail to adequately develop,  
27 implement, and/or revise an MIP for the Facility.

28 170. Each and every violation of the Storm Water Permit's MIP requirements at  
the Facility is a separate and distinct violation of the CWA.

171. By committing the acts and omissions alleged above, the Owners/Operators are subject to an assessment of civil penalties for each and every violation of the CWA occurring from January 31, 2018, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

172. An action for injunctive relief under the CWA is authorized by Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm LA Waterkeeper, its members, and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

173. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties. WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

#### **FIFTH CAUSE OF ACTION**

#### **Defendant's Failure to Report as Required by the Storm Water Permit in Violation of the Storm Water Permit and the Clean Water Act.**

#### **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

174. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

175. Section XVI of the General Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section XVI of the Permit requires that the Annual Report include a compliance checklist that indicates that a discharger complies with and has addressed all applicable requirements of the Permit, an affirmation of visual observations and sampling results, an identification and explanation of any non-compliance, an identification of all revisions made to the SWPPP, within the reporting year, and the date of the Annual Evaluation. General Permit Section XVI. Laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required are also reporting requirements throughout the reporting year and our typically uploaded into the

1 SMARTS portal.

2 176. The Permit also requires a permittee whose discharges violate the General  
3 Permit's Receiving Water Limitations or water quality standards, such as, NALs,  
4 TMDLs, and TNALs to implement additional BMPs or other control measures that are  
5 tailored to that facility in order to attain compliance with the receiving water limitation. A  
6 Discharger that is notified by a Regional Board or who determines the discharge is  
7 causing or contributing to an exceedance of a water quality standard must comply with  
8 the Water Quality Based Corrective Actions in Section XX.B of the Permit and report to  
9 the Regional Board regarding same. *See* General Permit Section XX.B.

10 177. LA Waterkeeper is informed and believes, and thereon alleges, that the  
11 Owners/Operators have failed to accurately report their non-compliance with the General  
12 Permit and correctly report storm water sampling analysis compliance in the Facility's  
13 Annual Reports. Further, the Facility ERA Reports were insufficient, as evidenced by  
14 subsequent storm water sampling results over the NALs. As such, the Owners/Operators  
15 are in daily violation of the General Permit.

16 178. The Facility Owners/Operators have been in violation of Sections XVI and  
17 XX of the Storm Water Permit since at least January 31, 2018.

18 179. The Owners'/Operators' violations of the reporting requirements of the  
19 Storm Water Permit and the CWA are ongoing and continuous.

20 180. By committing the acts and omissions alleged above, the Owners/Operators  
21 of the Facility are subject to an assessment of civil penalties for each and every violation  
22 of the CWA occurring from January 31, 2018, to the present, pursuant to Sections 309(d)  
23 and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

24 181. An action for injunctive relief under the CWA is authorized by Section  
25 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and  
26 omissions alleged above would irreparably harm LA Waterkeeper, its members, and the  
27 citizens of the State of California, for which harm they have no plain, speedy, or adequate  
28 remedy at law.

1           182. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
2 an actual controversy exists as to the rights and other legal relations of the Parties.

3           WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
4 hereafter.

5 **VII. RELIEF REQUESTED**

6           183. Wherefore, Plaintiff respectfully requests that this Court grant the following  
7 relief:

8           a. A Court order declaring Defendant to have violated and to be in  
9 violation of Sections 301(a) and (b) and 402 of the Clean Water Act, 33 U.S.C. §§  
10 1311(a) and (b); for its unlawful discharges of pollutants from the Facility in violation  
11 of a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), for  
12 failing to meet effluent standards limitations which include BAT/BCT requirements,  
13 and for failing to comply with the substantive and procedural requirements of the  
14 Storm Water Permit and the CWA.

15           b. A Court order enjoining Defendant from violating the substantive and  
16 procedural requirements of the Storm Water Permit and Sections 301(a) and 402 of  
17 the CWA, 33 U.S.C. §§ 1311(a), 1342;

18           c. A Court order assessing civil monetary penalties for each violation of  
19 the CWA occurring on or after November 2, 2015, of \$64,618 per day, as permitted  
20 by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for Inflation, 40  
21 C.F.R. § 19.4 (2016);

22           d. A Court order awarding Plaintiff its reasonable costs of suit, including  
23 attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the  
24 Clean Water Act, 33 U.S.C. § 1365(d); and

25           e. Any other relief as this Court may deem appropriate.  
26  
27  
28

1 Dated: July 6, 2023

Respectfully submitted,

3 s/ Anthony M. Barnes

4 Anthony M. Barnes

AQUA TERRA AERIS LAW GROUP

5 Attorneys for Plaintiff

6 LOS ANGELES WATERKEEPER